

**TEACHERS' RETIREMENT FUND, INDIANA STATE:
Qualifications of clerical employe of school corporation for
membership in fund.**

September 28, 1937.

Hon. Robert B. Hougham,
Executive Secretary,
Teachers' Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion construing certain language in section 14 of the Teachers' Retirement Fund Act of 1915 as amended in 1921 and as further amended by section 3 of chapter 189 of the Acts of 1937. In order to clearly present the question it is necessary to copy the first literary paragraph of said amended section, which is as follows:

"The members and beneficiaries of this fund shall include any legally qualified and regularly employed teacher, teacher-clerk, supervising principal, principal, supervisor, superintendent of schools, person in charge of teaching any special department of instruction or training, or any other teacher or instructor legally qualified and regularly employed as such in any of the public schools of this state *or any persons employed by a public school corporation who were qualified under this Act previous to their election or appointment*; or in any public state normal school of the state, supported wholly by public money, and devoted to the preparation of teachers; or the legally qualified and regularly employed teachers, principals, superintendent and others named above in any other public state educational institution of this state supported wholly by public money and whose teachers devote their entire time to teaching and the legally qualified and regularly employed teachers in state benevolent, charitable, and correctional institutions whose teachers devote their entire time to teaching; and employes in the office of the state superintendent of public instruction or in the office of the state teachers' retirement fund who were qualified

under this Act previous to their election or appointment. The secretary to the president and the assistant librarian of the Indiana State Normal School, shall be construed to be teacher-clerks within the meaning of this Act." (Our italics.)

Acts of 1937, page 911.

The italicized language is the language inserted by the 1937 amendment.

With respect to the above italicized language, you state that a question has arisen as to the qualifications for membership in the fund of a clerical employe of a school corporation who at the time of employment a number of years ago was a regularly qualified teacher but who allowed her teacher's license to expire and who has never renewed it and who is not now qualified for a teacher's license. You request an opinion as to whether such a person is a member and beneficiary of the teachers' retirement fund by reason of the italicized language above quoted.

It will be noted that the effect of the above quoted language is to add to the members and beneficiaries of the fund a new group of persons who are not employed in the teaching profession. It is the purpose of your question to elicit the boundary lines which circumscribe this class. It will be observed first of all that this new class consists of persons employed by a public school corporation who are not engaged in the teaching profession but "who were qualified under this Act previous to their election or appointment" as members and beneficiaries of the fund. The language "who were qualified under this Act" doubtless has reference to qualification under other provisions of the Act, as, for example, being legally qualified and regularly employed as a teacher or teacher-clerk or supervising principal or in some other of the subdivisions of the teaching profession referred to in the Act.

The serious question involved in the construction of the language, however, is first as to whether the effect of the amendment is to include only such qualified employes as were appointed *after* the effective date of the Act; and second, as to whether it is necessary in order to constitute membership in the fund that the employe be qualified under other provisions of the Act *at the time of the employment*.

As to the first question, in my opinion the language seems to contemplate that any of such persons who were employes at the time the Act became effective and who at the time of their employment were legally qualified members of the fund, but who, if depending upon other provisions of the Act, would lose membership therein because of their no longer being in the teaching profession, would, nevertheless, be members of the fund and entitled to its benefits.

Referring now to the second question as to whether it is necessary in order to constitute membership in the fund that the employe be qualified under other provisions of the Act *at the time of the employment*, I think it was the intention of the legislature to thus limit the class. It is true that the word "previous" is used, which is broad enough to include a qualification at any time prior to the employment, but it seems to me that such a construction can hardly prevail. I think that such a construction would make of clerks not engaged in the teaching profession really a preferred class as compared with those who are engaged in the teaching profession, which I do not think is intended.

In addition to what has already been said, I am informed that the above is the practical construction which was given to similar language in 1921 when the clerks in the office of the state superintendent of public instruction and in the office of the state teachers' retirement fund who were qualified under the Act *previous* to their election or appointment, were made members of the fund.

In a discussion of the questions involved, I have been advised by you orally that the matter which was uppermost in your own mind was not, however, the questions which I have thus far considered, but the question as to whether the Act required an employe of a school corporation who was legally qualified for membership in the fund at the time of her employment for non-teaching service by the school corporation to maintain that qualification by maintaining a valid license to teach continuously during such employment. I think the language is quite clear upon this point. There is nothing in the language, as I see it, which suggests that the employe who is otherwise qualified at the time of his employment is required to maintain a teacher's license. The thing which is required, I think, is that the employe at the time of the employment by the school corporation for a non-teaching service is

qualified under other provisions of the Act for membership in the fund. If such employe is thus qualified for membership in the fund, it would continue notwithstanding the teacher's license may have expired in the meantime.

I trust this will clarify the matter. As applied to the case submitted by you, it would appear that such employe is a member of the fund.

TEACHERS' RETIREMENT FUND, INDIANA STATE:

Authority of Board to sell real estate, title to which has been acquired through foreclosure proceedings.

September 28, 1937.

Hon. Robert B. Hougham,
Executive Secretary,
Teachers' Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that the Indiana State Teachers' Retirement Fund is the owner of a number of real estate properties in Indianapolis which were acquired by the fund by foreclosure of mortgages given to the Indianapolis Teachers' Pension Fund before that unit became a part of the state system. You state further that the board is desirous of selling these properties when, as and if the proper offers can be obtained. You request an opinion as to whether the board has the authority to make a sale of real estate thus obtained and thus owned by the fund.

In my letter of July 28, 1937, to the state examiner of the state board of accounts, I held with respect to investments made by the board that it is charged only with the investment of funds in interest bearing securities of the type named in the Act, and that having once made such purchases it is charged with the duty to deposit and keep in its custody the securities so purchased, collecting only the interest and income therefrom as the same shall become due and payable. I accordingly held that the board of trustees of the Indiana State Teachers' Retirement Fund is not authorized to sell securities purchased as an investment nor to trade or exchange such securities for other securities. In the same